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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOPHIST, LLC,	Civil Action No. __________
Plaintiff,	
	COMPLAINT
-against-	
	JURY TRIAL DEMANDED
MYPLEDGER, LLC, and LARON WALKER,	
Defendants.	

SOPHIST, LLC'S COMPLAINT FOR SERVICE MARK INFRINGEMENT, FALSE DESIGNATION OF ORIGIN, SERVICE MARK DILUTION, DECEPTIVE BUSINESS PRACTICES, AND INTENT TO DECEIVE

Plaintiff Sophist LLC ("Plaintiff," or "Sophist"), by and through its attorneys, Davidoff Hutcher & Citron LLP, as and for its Complaint against defendant MyPledger, LLC ("MyPledger") and Laron Walker ("Mr. Walker") (MyPledger and Mr. Walker together, "Defendants") alleges as follows:

NATURE OF THE ACTION

1. This action arises from Defendants' (i) Service Mark Infringement in Violation of Section 32 of the Lanham Act (15 U.S.C. § 1114); (ii) False Designation of Origin in Violation

of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)); (iii) Service Mark Dilution in Violation of Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c)); (iv) Deceptive Business Practices in Violation of N.Y. Gen. Bus. Law § 349; (v) Service Mark Dilution in Violation of N.Y. Gen. Bus. Law § 360-1; (vi) Intent to Deceive in Violation of N.Y. Gen. Bus. Law § 133; (vii) Common Law Service Mark Infringement; and (viii) Common Law Unfair Competition.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over all claims brought under the laws of the United States pursuant to 15 U.S.C. § 1121 (Section 39 of the Lanham Act) and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over all claims brought under the laws of New York State pursuant to 28 U.S.C. § 1367.

3. Alternatively, this Court has subject matter jurisdiction over all claims brought herein pursuant to 28 U.S.C. § 1332, as at the filing of this Complaint, there exists complete diversity of citizenship and the amount in controversy, exclusive of interest and costs, exceeds the sum of $75,000.

4. This Court has personal jurisdiction over Defendants herein, in that, *inter alia*, Defendants transact business in New York or contract to supply goods or services in New York; and/or have committed tortious acts within New York; and/or committed tortious acts outside New York causing injury to persons or property within New York, and regularly do or solicit business in New York, or engage in a persistent course of conduct in New York, or reasonably expect their acts to have consequences in New York.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to this Action occurred in this judicial district.

THE PARTIES

6. Sophist is a New York limited liability company having a place of business at 205 East Forty-Second Street, New York, New York 10017.

7. Sophist provides its clients consulting products and services aimed at improving fundraising effectiveness and maximizing charitable giving.

8. Upon information and belief, MyPledger is a Georgia limited liability company having a place of business at 10 Tenth Street NW, #275, Atlanta, Georgia 30309.

9. Upon information and belief, MyPledger provides its clients consulting products and services aimed at improving fundraising effectiveness and maximizing charitable giving.

10. Upon information and belief, Mr. Walker is a natural person domiciled in State of Georgia.

11. Upon information and belief, Mr. Walker is the CTO of MyPledger.

THE MARK

12. Sophist is the owner of all right, title, and interest in the service mark **TEXT-TO-PLEDGE,** United States Registration No. 4,291,951 in International Class 036 for **TEXT-TO-PLEDGE** (the "Mark").[1] A copy of the original registration for the Mark is attached hereto as **Exhibit A**.

13. At all times relevant hereto, the Mark was, and is, a valid and legally issued service mark.

14. Sophist has been using the Mark continuously since at least as early as 2007.

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[1] At the time of the Mark's registration on the principal register, Sophist's legal name was "Sophist Productions LLC." Sophist has since changed its legal name to "Sophist LLC" and updated such name change with the USPTO Electronic Trademark Assignment System.

15. The Mark designates Sophist's flagship service, a live mobile fundraising platform, which allows users to pledge monetary contributions via text message to prospective charities (the "Service"). The Service is most successfully employed at galas and other fundraising events, where emcees invite attendees to text in their pledges of support and the collective results are broadcast live on screens accessible to all attendees.

GOODWILL OF THE MARK

16. As a result of Sophist's extensive use and marketing efforts, the Mark has become well-known in the public relations industry. The Mark has come to embody the innovative fund raising methods offered at the highest standards of quality.

17. Since its inception, TEXT-TO-PLEDGE has successfully enhanced fundraising efforts at more than 500 events, and has been employed to raise more than $50 million.

18. Sophist's Services in association with the Mark have received significant press coverage and industry awards, including the 2010 and 2009 International Live Events Association Big Apple Award for Best Demonstration of ROI at an Event.

19. Accordingly, the Mark has become a famous mark and satisfies the elements of a famous mark pursuant to 15 U.S.C. § 1125(c).

DEFENDANTS' INFRINGEMENT OF THE MARK

20. Sophist has never licensed or otherwise authorized MyPledger, Mr. Walker, or any other person or entity associated with Defendants to use the Mark.

21. Upon information and belief, beginning in or about July 2016, MyPledger began to offer and continues to offer for sale a live mobile fundraising platform, which allows users to pledge monetary contributions via text message to prospective charities, which MyPledger calls "Text to Pledge" (the "Infringing Mark").

22. In or about August 2016, MyPledger began advertising such services on its website, and incorporated into the Infringing Mark a "TM" symbol.

23. Upon information and belief, MyPledger intended to and did use the Infringing Mark as a service mark, as is evidenced by, among other things, MyPledger's use of the "TM" symbol.

24. Upon information and belief, Mr. Walker authorized and approved MyPledger's use of the Infringing Mark.

25. Upon information and belief, Mr. Walker was the moving, active conscious force behind MyPledger's infringement of the Mark.

26. On or about August 31, 2016, Plaintiff sent to MyPledger a cease and desist letter (the "Cease and Desist Letter") demanding that MyPledger discontinue its infringement upon the Mark by, among other things, removing from MyPledger's website its offering of the Infringing Mark.

27. Mr. Walker, who responded on behalf of MyPledger, acknowledged receipt of the Cease and Desist Letter, but communicated his refusal to remove the Infringing Mark. As of the date of this Complaint, MyPledger continues to display on its website the Infringing Mark as a service mark.

28. Upon information and belief, MyPledger continues to use the Infringing Mark deliberately, intentionally, and maliciously to mislead and confuse customers into falsely believing that MyPledger's services are provided, sponsored, or approved by Sophist.

29. Upon information and belief, Sophist's former clients seeking to contact Sophist for renewed TEXT-TO-PLEDGE services have mistakenly contacted MyPledger because

MyPledger offers similar services under the Infringing Mark, which is nearly identical to Sophist's Mark.

30. Upon information and belief, MyPledger and Mr. Walker were aware of Sophist's use of the Mark when MyPledger began using the Infringing Mark.

31. As a result of the foregoing, Sophist has suffered, and continues to suffer, irreparable harm and economic injury.

FIRST CAUSE OF ACTION
(Service Mark Infringement in Violation of Section 32 of the Lanham Act (15 U.S.C. § 1114))

32. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

33. Defendants have used and continue to use in commerce, without the consent of Plaintiff, a reproduction, counterfeit, copy, or colorable imitation of the Mark, which is registered on the Principal Federal Register, in connection with the advertising and sale of text message donation services, which use has and is likely to cause confusion, or to cause mistake, or to deceive.

34. Defendants' acts constitute service mark infringement in violation of Section 32 of the Lanham Act.

35. Upon information and belief, Defendants have made and will continue to make substantial profits and gains to which they are not entitled to in law or equity.

36. Upon information and belief, Defendants intend to continue their infringing acts, and will continue to willfully infringe the Mark unless restrained by Order of the Court.

37. Plaintiff's remedy at law is not adequate enough to remedy the injuries it is incurring and will continue to incur from Defendants' wrongful conduct. Consequently, Plaintiff is entitled to preliminary and permanent injunctive relief in accordance with 15 U.S.C. § 1116.

38. Plaintiff is entitled to recover Defendants' profits, any damages sustained, and Plaintiff's costs in bringing this action in accordance with 15 U.S.C. § 1117(a).

39. Plaintiff is also entitled to have its damages trebled in accordance with 15 U.S.C. § 1117(b).

40. Plaintiff is entitled, at its election, to statutory damages in accordance with 15 U.S.C. § 1117(c).

41. Plaintiff is entitled to an Order pursuant to 15 U.S.C. § 1118 directing Defendants to turn over all representations of the Mark in Defendants' possession to Plaintiff for destruction.

SECOND CAUSE OF ACTION
(False Designation in Violation of Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a))

42. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

43. Defendants' promotion of its text message donation services under the Infringing Mark is intended to and is likely to confuse, mislead, or deceive Plaintiff's clients and the public as to the origin, source, sponsorship, or affiliation of Defendants' services that are designated with the Infringing Mark. Moreover, the use of the Infringing Mark is intended to, and is likely to cause such parties to believe in error, that Plaintiff authorized or endorsed Defendants' text message donation services, or that the services are affiliated with Plaintiff in some way.

44. Defendants' acts constitute a false designation of origin, and false and misleading descriptions and representations of fact, all in violation of Section 43(a) of the Lanham Act.

45. Upon information and belief, Defendants by their acts have made and will continue to make substantial profits and gains to which it is not entitled to in law or equity.

46. Upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by Order of the Court.

47. Plaintiff's remedy at law is not adequate enough to remedy the injuries it is incurring and will continue to incur from Defendants' wrongful conduct. Consequently, Plaintiff is entitled to preliminary and permanent injunctive relief in accordance with 15 U.S.C. § 1116.

48. Plaintiff is entitled to recover Defendants' profits, any damages sustained, and Plaintiff's costs in bringing this action in accordance with 15 U.S.C. § 1117(a).

49. Plaintiff is entitled to an Order pursuant to 15 U.S.C. § 1118 directing Defendants to turn over all representations of the Mark in Defendants' possession to Plaintiff for destruction.

THIRD CAUSE OF ACTION
(Service Mark Dilution in Violation of Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c))

50. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

51. Plaintiff is the exclusive owner of the Mark.

52. The Mark is a strong and distinctive mark that has been in use for many years and has achieved widespread public recognition.

53. The Mark became famous within the meaning of Section 43(c) of the Lanham Act prior to Defendants' use of the Infringing Mark.

54. Defendants' commercial use of the Mark, without authorization from Plaintiff, is diluting, by blurring or by tarnishing, the distinctive quality of the Mark.

55. Defendants willfully and intentionally diluted the distinctive quality of the Mark in violation of Section 43(c) of the Lanham Act.

56. Upon information and belief, Defendants by their acts have made and will continue to make substantial profits and gains to which they are not entitled to in law or equity.

57. Upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by Order of the Court.

58. Plaintiff's remedy at law is not adequate enough to remedy the injuries it is incurring and will continue to incur from Defendants' wrongful conduct. Consequently, Plaintiff is entitled to preliminary and permanent injunctive relief in accordance with 15 U.S.C. § 1116.

59. Plaintiff is entitled to recover Defendants' profits, any damages sustained, and Plaintiff's costs in bringing this action in accordance with 15 U.S.C. § 1117(a).

60. Plaintiff is entitled to an Order pursuant to 15 U.S.C. § 1118 directing Defendants to turn over all representations of the Mark in Defendants' possession to Plaintiff for destruction.

FOURTH CAUSE OF ACTION
(Deceptive Business Practices in Violation of N.Y. Gen. Bus. Law §349)

61. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

62. By using the Mark in connection with the marketing of its text message donation services, Defendants are likely to cause confusion or mistake, or to deceive the public, Plaintiff's clients and potential clients, as to an affiliation, connection, or association with Plaintiff in violation of N.Y. Gen. Bus. L. § 349.

63. Defendants engaged in the infringement alleged herein within the State of New York with the intent to deceive and defraud the public and to take advantage of the Plaintiff's reputation as a well-regarded provider of text message donation services.

64. Defendants willfully and knowingly violated N.Y. Gen. Bus. Law§ 349.

65. Defendants' conduct has caused, and continues to cause, irreparable injury to the value, goodwill and reputation associated with Plaintiff and the Mark. As such, Plaintiff's remedy at law alone is not adequate. Consequently, Plaintiff is entitled to a preliminary and permanent injunction in accordance with N.Y. Gen. Bus. Law§ 349(h).

66. Plaintiff is entitled to damages, trebled damages and its attorneys' fees in accordance with N.Y. Gen. Bus. Law§ 349(h).

FIFTH CAUSE OF ACTION
(Service Mark Dilution in Violation of N.Y. Gen. Bus. Law § 360-1)

67. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

68. By the acts described herein, Defendants diluted the distinctiveness of the Mark and have caused a likelihood of harm to Plaintiff's business reputation in violation of N.Y. Gen. Bus. Law § 360-1.

69. Defendants' acts will continue to impair Plaintiff's rights unless enjoined by this Court and Plaintiff has no adequate remedy at law.

SIXTH CAUSE OF ACTION
(Intent to Deceive in Violation of N.Y. Gen. Bus. Law § 133)

70. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

71. By the acts described herein, Defendants used the Mark with the intent to deceive the public and has caused a likelihood of harm to Plaintiff's business reputation in violation of N.Y. Gen. Bus. Law§ 133.

72. Defendants' acts will continue to impair Plaintiff's rights unless enjoined by this Court and Plaintiff has no adequate remedy at law.

SEVENTH CAUSE OF ACTION
(Common Law Service Mark Infringement)

73. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

74. As described herein, the Mark has gained extensive public recognition and is associated with Plaintiff's services.

75. Defendants' aforementioned conduct constitutes service mark infringement in violation of the common law of the State of New York.

76. Upon information and belief, Defendants by their acts have made and will continue to make substantial profits and gains to which they are not entitled to in law or equity.

77. Upon information and belief, Defendants intend to continue their willfully infringing acts unless restrained by Order of the Court.

78. Plaintiff has no adequate remedy at law for the injuries it is incurring and will continue to incur from Defendants' wrongful conduct.

EIGHTH CAUSE OF ACTION
(Common Law Unfair Competition)

79. Plaintiff repeats and re-alleges all previous allegations as if fully set forth herein.

80. As described herein, the Mark has gained extensive public recognition and is associated with Plaintiff's services.

81. Defendants' unauthorized use of the Mark is causing, and is likely to cause, confusion in commerce because the public may believe that Defendants' text message donation services are authorized by or somehow affiliated with Plaintiff.

82. Upon information and belief, Defendants by their acts have made and will continue to make substantial profits and gains to which it is not entitled to in law or equity.

83. Upon information and belief, Defendants intend to continue their willfully infringing acts, thereby unfairly competing with Plaintiff for text message donation services, unless restrained by Order of the Court.

84. Defendants' aforementioned conduct constitutes unfair competition in violation of the common law of the State of New York.

85. Plaintiff's remedy at law for the injuries it is incurring and will continue to incur from Defendants' wrongful conduct is not adequate alone. Consequently, Plaintiff is entitled to a preliminary and permanent injunction

86. Plaintiff is entitled to damages in an amount to be determined at trial.

RESERVATION OF RIGHTS

The above allegations and claims are based upon information known to Sophist, and/or upon Sophist's information and belief, at this time. Sophist's discovery and investigation in this Action is continuing and Sophist reserves its right to supplement and/or amend such allegations and claims.

REQUEST FOR RELIEF

WHEREFORE Plaintiff demands judgment against Defendants as follows:

i. Finding that Defendants violated (i) Section 32 of the Lanham Act; (ii) Section 43(a) of the Lanham Act; (iii) Section 43(c) of the Lanham Act, (iv) Section 349 of the N.Y. Gen. Bus. Law; (v) Section 360-1 of the N.Y. Gen. Bus. Law; (vi) Section 133 of the N.Y. Gen Bus. Law; and (vii) the common law of the State of New York pertaining to service mark infringement and unfair competition;

ii. Granting an injunction preliminarily and permanently restraining and enjoining Mr. Walker and MyPledger, its officers, agents, employees, attorneys, successors, assigns, and all persons or entities in active concert or participation with them, or any of them, from (i) providing text message donation services under the Infringing Mark or any other mark confusingly similar to the Mark and engaging in any other activity constituting an infringement of the Mark; (ii) displaying the Infringing Mark or any other mark confusingly similar to the Mark in any manner whatsoever, including but not limited to, on the its website or in its promotional materials; (iii) engaging in any activity constituting unfair

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competition with Plaintiff, or acts or practices that deceive the public; and (iv) engaging in any activity that will dilute the distinctiveness of the Mark;

iii. Directing Defendants to account to and pay over to Plaintiff all profits realized by their wrongful acts and any damages sustained by Plaintiff, and directing such profits be trebled, as well as all costs associated with commencing this action, in accordance with Section 35 of the Lanham Act (15 U.S.C. § 1117(a) and (b));

iv. At Plaintiff's election, awarding statutory damages to Plaintiff in accordance with Section 35 of the Lanham Act (15 U.S.C. § 1117(c));

v. Awarding actual damages, treble damages, and attorney’s fees to Plaintiff to the full extent provided for by Section 349 of the N.Y. Gen. Bus. Law. (N.Y. Gen. Bus. L § 349(h));

vi. Ordering Defendants to turn over all representations of the Mark in Defendants’ possession to Plaintiff for destruction in accordance with 15 U.S.C. § 1118;

vii. Awarding pre-judgment interest on any monetary award made part of the judgment against Defendants to Plaintiff;

viii. Awarding damages for Plaintiff's Common Law Unfair Competition claim for an amount to be determined at trial; and

ix. Awarding such additional and further relief to Plaintiff as the Court deems just and proper, including but not limited to, anything the Court may deem appropriate to prevent the public from deriving any erroneous impression that

Plaintiff authorized, or is related and associated with, any service at issue in this case that Defendants marketed or promoted.

Dated: New York, New York
March 23, 2017

DAVIDOFF HUTCHER & CITRON LLP
Attorneys for Plaintiff

By: ____________/s/__________________

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